



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Mark Dinsmore

Serial No.: 10/790,636 (which is a reissue application of
6,493,419 issued December 10, 2002)

Filed: March 01, 2004

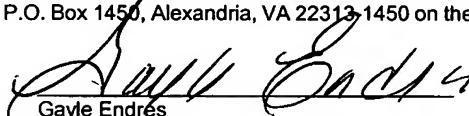
Title: Optically Driven Therapeutic Radiation Source
Having Spiral Shaped Thermionic Cathode

Attorney Ref.: 56249-173 (PHLL-157RE)

CERTIFICATE OF MAILING (37 C.F.R. § 1.8(a))

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail under 37 CFR 1.8(a) in an envelope addressed to Office of Petitions, the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date indicated below.

Date: 4/4/05



Gayle Endres

Office of Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RENEWED PETITION UNDER 37 CFR § 1.47(b)

Dear Sir:

In response to the Notice of Missing Parts of Reissue Application dated May 4, 2004, a renewed Petition is hereby made to accept the Declaration and Power of Attorney, which is enclosed herewith and is signed by Mark G. Lappin on behalf of and as an agent of the sole inventor of the above-identified application, pursuant to the provisions of 37 C.F.R. § 1.47(b). The Notice To File Missing Parts of Reissue Application has a two (2) month shortened statutory period for response expiring April 4, 2005 (April 2, 2005 falls on a Saturday). A Petition for a Five Month Extension of Time to Respond to the Notification of Missing Parts was already filed on November 4, 2004 with the Petition of same date. However, if the Office of Petitions deems it

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necessary to file a Petition for Extension of Time with this filing, please charge the requisite fee to our Deposit Account No. 50-1133.

A. SOLE INVENTOR

Mark Dinsmore is the sole inventor of the above-identified application ("Application"). At the time Mark Dinsmore invented the subject matter of the Application ("Invention"), he was an employee of Photoelectron Corporation ("Photoelectron").

B. APPLICANT MAKES OATH

In accordance with M.P.E.P. §409.03(b), the undersigned, Mark G. Lappin, hereby makes application for the Invention on behalf of and as agent for an inventor who refuses to sign the Declaration and Power of Attorney for the Application ("Application Papers"). Mark G. Lappin hereby states that he is authorized to sign on behalf of Carl Zeiss AG, the current assignee of the Application, in this matter for this purpose.

C. APPLICANT'S RELATIONSHIP TO INVENTOR

In accordance with M.P.E.P. § 409.03(b), applicant Mark G. Lappin is a registered patent attorney (Registration No. 26,618) in the Intellectual Property Department of McDermott Will & Emery LLP, acting on behalf of Carl Zeiss AG, who acquired the Application from Photoelectron. Photoelectron is the original assignee of Mark Dinsmore's interest in the patent Application.

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D. INVENTOR REFUSED TO SIGN THE APPLICATION PAPERS

In accordance with M.P.E.P. §409.03(d), 1) Mark Dinsmore refused to sign the Application Papers, despite having been asked to do so; and 2) Mark Dinsmore gave a reason for refusing to sign the Application Papers, namely that he was concerned that signing the Application Papers might limit his future business activities.

E. PROOF OF REFUSAL TO EXECUTE THE APPLICATION PAPERS

In accordance with M.P.E.P. §409.03(d), Mark G. Lappin submits herewith a "Revised Declaration in Support of a Petition Under 37 C.F.R. § 1.47(b)", which fully describes the facts that are relied upon to establish that Mark Dinsmore refused to sign the Application Papers.

F. LAST KNOWN ADDRESS

In accordance with M.P.E.P. §409.03(e), the last known address of Mark Dinsmore is: 25 Wadsworth Road, Sudbury, MA 01776.

G. THE INVENTOR HAS ASSIGNED THE INVENTION TO CARL ZEISS AG

In accordance with M.P.E.P. §409.03(f), the inventor Mark Dinsmore assigned the Patent Application to Photoelectron, which in turn assigned the Application to Carl Zeiss AG. A copy of the relevant assignment documents ("Assignment Documents") are attached to this petition. The Assignment Documents establish a *prima facie* case that Carl Zeiss AG has a proprietary interest in the subject matter of the Application.

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H. FILING OF THE APPLICATION IS NECESSARY TO PRESERVE THE RIGHTS OF CARL ZEISS AG

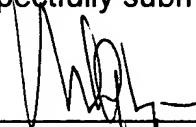
In accordance with M.P.E.P. §409.03(g), the refusal by Mark Dinsmore to sign the Application Papers fails to preserve Carl Zeiss AG's rights granted under the Assignment Documents, and will result in irreparable damage by causing the abandonment of the Application for failure to comply with the statutory requirements of 37 C.F.R. §1.497. The filing of the Application is necessary to preserve the rights of Carl Zeiss AG.

I. PETITION FEE

The Commissioner is hereby authorized to charge the petition fee in accordance with 37 C.F.R. 1.117(i), as well as the petition fee (if deemed necessary) for an extension of time under 37 C.F.R. § 1.136, to Deposit Account 50-1133. The Commissioner is hereby authorized to charge any additional fees that may be due, or credit any overpayment of same, to Deposit Account No. 50-1133.

Date: 4/4/05

Respectfully submitted,



Mark G. Lappin
Registration Number 26,618
McDERMOTT WILL & EMERY LLP
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Boston, Massachusetts 02109
Customer No.: 23630
Tel.: (617) 535-4043
Fax: (617) 535-3800



THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Mark Dinsmore

Serial No.: 10/790,636 (which is a reissue application of 6,493,419 issued December 10, 2002)

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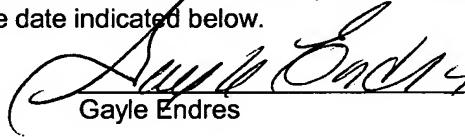
Attorney Ref.: 56249-173 (PHLL-157RE)

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Assistant Commissioner for Patents
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Gayle Endres

**REVISED DECLARATION OF MARK G. LAPPIN FILED
IN SUPPORT OF PETITION UNDER 37 C.F.R. § 1.47(b)**

Dear Sir:

I, Mark G. Lappin, to the best of my knowledge and belief, do hereby state as follows:

1. I am a registered patent attorney (Registration No. 26,618) in the Intellectual Property Department of McDermott Will & Emery LLP, acting on behalf of Carl Zeiss AG, who is the current assignee of the above-referenced reissue application ("Reissue Application").
2. Mark Dinsmore is the sole inventor of the Reissue Application.

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3. Mark Dinsmore is the sole inventor of U.S. Patent No. 6,493,419B2 ("Underlying Patent"), upon which the Reissue Application is based.

4. I filed and prosecuted the application that issued in due course as the Underlying Patent ("Underlying Application").

5. Because Mark Dinsmore is the sole inventor of the Underlying Patent, has reviewed the contents of the Underlying Application, and has signed the application papers for the Underlying Application, Mark Dinsmore is thoroughly familiar with the subject matter disclosed in the Reissue Application.

6. On November 8, 2004, I met with Mark Dinsmore and spoke to him about the Reissue Application, explaining to him the proposed changes to the claims of the Reissue Application, as compared to the claims of the Underlying Patent.

7. At the aforesaid November 8, 2004 meeting, I presented the entire Reissue Application, including the specification, claims, drawings and Declaration, to Mark Dinsmore, and solicited his review of the Reissue Application and, if all was in order, his signature of the Declaration for the Reissue Application.

8. At the aforesaid November 8, 2004 meeting, Mark Dinsmore stated to me that he would not sign the Declaration for the Reissue Application, thereby effecting an oral refusal to sign the Declaration for the Reissue Application. Mark Dinsmore's oral refusal to sign occurred on November 8, 2004, in Massachusetts.

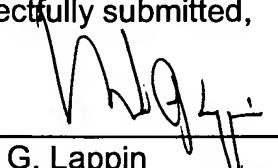
9. At the aforesaid November 8, 2004 meeting, Mark Dinsmore stated a reason for his refusal, namely that he was concerned that signing the Declaration for the Reissue Application would limit his future business activities.

10. I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false

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statements and the like so made are punishable by fine or imprisonment or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of any application or patent issued thereon.

Respectfully submitted,



Mark G. Lappin
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Boston, Massachusetts 02109
Tel. (617) 535-4043
Fax: (617) 535-3800

Date: April 4, 2005